

Senate Daily Reader

Thursday, March 06, 2003

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State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

465I0462

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1110 - 03/03/2003

Introduced by: Representatives McCaulley, Cradduck, Cutler, Hennies, Murschel, O'Brien, Peterson (Bill), Rounds, and Thompson and Senators Knudson, Albers, de Hueck, Dempster, Kelly, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the expenditure of
2 proceeds from the county wheel tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5A-2 be amended to read as follows:

5 32-5A-2. The proceeds from the tax created by this chapter shall be retained by the county
6 and deposited in the county road and bridge fund, and the revenue may be used only for highway
7 and bridge supervision, maintenance, and construction. The board of county commissioners shall,
8 by resolution, establish a means of distributing the revenue generated by this chapter among the
9 county and the municipalities and townships located within the county.

10 Section 2. That § 32-11-2 be amended to read as follows:

11 32-11-2. The funds credited to the county road and bridge fund pursuant to § 32-11-4.2 shall
12 be used by the board of county commissioners for grading, constructing, planing, dragging, and
13 maintaining county highways and also for dragging, maintaining, and grading secondary roads.
14 Proper equipment for dragging, grading, and maintaining highways, such as graders, tractors,



1 drags, maintainers, and planers may be purchased from such county road and bridge fund. If a
2 county has a population of fifty thousand or more, up to thirty percent of the proceeds credited
3 pursuant to § 32-5A-2 in any year may be used for the additional purpose of supervising public
4 highways, roads, and bridges within the county.

5 Section 3. That § 32-11-4.2 be amended to read as follows:

6 32-11-4.2. The county road and bridge fund is hereby established for the accounting and
7 safekeeping of highway and bridge funds of the counties for the deposit and receipt of all public
8 moneys usable for county highway and bridge construction, maintenance, and repair. If a county
9 has a population of fifty thousand or more, up to thirty percent of the proceeds credited pursuant
10 to § 32-5A-2 in any year may be used for the additional purpose of supervising public highways,
11 roads, and bridges within the county. Revenues to be deposited in the fund include:

- 12 (1) Distribution of funds from the local government highway and bridge fund pursuant
13 to §§ 32-11-34 and 32-11-35;
- 14 (2) Levies under subdivisions 10-12-9(4) and (6);
- 15 (3) Levies for the county highway and bridge reserve fund established pursuant to
16 § 10-12-13;
- 17 (4) Levies for secondary roads in unorganized territory pursuant to § 31-12-27;
- 18 (5) Levies for the county snow removal and special emergency reserve fund established
19 pursuant to § 34-5-2;
- 20 (6) Funds collected from motor vehicle licenses and credited to the county pursuant to
21 subdivision 32-11-4.1(1A);
- 22 (7) Distribution of mobile home license fees pursuant to § 32-5-16.2;
- 23 (8) Distribution of interstate reciprocity and proportional registration of fleets fees
24 pursuant to § 32-10-35;

- 1 (9) Proceeds from the wheel tax pursuant to § 32-5A-2;
- 2 (10) Revenue accruing from the sale of surplus highway equipment to property pursuant
- 3 to § 6-13-8; and
- 4 (11) Other revenue received by the county for service or work performed by the county
- 5 highway department under force account or agreement with other entities.
- 6 This section does not affect the deposit and use of the special highway fund for township
- 7 roads established pursuant to subdivision 32-11-4.1(2).

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

870I0080

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1147** - 03/03/2003

Introduced by: Representatives Van Etten, Adelstein, Christensen, Craddock, Frost, Glenski, Hunhoff, Kraus, Lange, LaRue, McCoy, Miles, Peterson (Bill), Rave, Rounds, and Weems and Senators Sutton (Duane), Dempster, Knudson, and McCracken

1 FOR AN ACT ENTITLED, An Act to increase the tax on cigarettes and to declare an
2 emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-50-3 be amended to read as follows:

5 10-50-3. A tax is imposed, whether or not a sale occurs, at the following rates on all
6 cigarettes held in this state for sale by any person:

7 Class A, on cigarettes weighing not more than three pounds per thousand, ~~sixteen and~~
8 ~~one-half~~ twenty-six and one-half mills on each cigarette.

9 Class B, on cigarettes weighing more than three pounds per thousand, ~~sixteen and~~
10 ~~eight-tenths~~ twenty-six and one-half mills on each cigarette.

11 Section 2. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
13 force and effect from and after its passage and approval.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

906I0497

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1157 - 03/03/2003

Introduced by: Representatives Teupel, Adelstein, Hennies, Konold, Madsen, McCoy, Pederson (Gordon), Solum, and Van Etten and Senators Olson (Ed), Duniphan, Ham, McCracken, Schoenbeck, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise the application of the gross receipts tax on visitor
2 related businesses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45D-1 be amended by adding thereto a NEW SUBDIVISION to read
5 as follows:

6 "Restaurant," any establishment where the public is invited to eat, dine, or purchase and carry
7 out prepared food for immediate consumption.

8 Section 2. That § 10-45D-1 be amended by adding thereto a NEW SUBDIVISION to read
9 as follows:

10 "Visitor intensive restaurant," any restaurant except any restaurant that does not derive fifty
11 percent or more of its annual total gross receipts during the months of June, July, August, and
12 September and has less than fifty-one seats based on the inspection records and license issued
13 by the Department of Health. No restaurant or licensed food service that is operated in a movie
14 theater; retail bakery; livestock auction; employee commissary and cafeterias; hospital; school



1 food service, stadium, or gym; college food service, stadium, or gym; military or service club;
2 and tribal food service facility is, however, included.

3 Section 3. That chapter 10-45D be amended by adding thereto a NEW SECTION to read
4 as follows:

5 There is hereby imposed a tax of one percent on the gross receipts from the sale of prepared
6 food and nonalcoholic beverages by any visitor intensive restaurant. Any sale of alcoholic
7 beverages, service, or parking by a visitor intensive restaurant is exempt from the tax imposed
8 by this section. The tax imposed by this section on the gross receipts of any visitor-intensive
9 restaurant shall apply to the gross receipts received by such restaurant during the months of June,
10 July, August and September.

11 Section 4. That § 10-45D-2 be amended to read as follows:

12 10-45D-2. There is hereby imposed a tax of one percent on the gross receipts from any
13 lodging establishment, campground, motor vehicle rental, visitor attraction, recreational
14 equipment rental, recreational service, spectator event, and visitor-intensive business. The tax
15 imposed by this section on the gross receipts of any visitor-intensive business shall apply to the
16 gross receipts received by such business during the months of June, July, August, and September.
17 The tax imposed by this section is in addition to any other tax imposed by chapters 10-45 and
18 10-46. Tangible personal property, services, and admissions are subject to the tax imposed by
19 this section only if subject to tax by chapters 10-45 and 10-46.

20 Section 5. That § 10-45D-3 be amended to read as follows:

21 10-45D-3. The revenue from the tax imposed by § 10-45D-2 shall be deposited in the
22 tourism promotion fund created in § 1-42-31. Fifty percent of the revenue collected from tax
23 imposed by section 3 of this Act on restaurants shall be disbursed by the Department of Tourism
24 to the four officially recognized geographic tourism regions in South Dakota. The four regions

1 are southeast South Dakota tourism region, the glacial lakes and prairies tourism region, the
2 great lakes of South Dakota tourism region, and the Black Hills Badlands and lakes tourism
3 region. The disbursement to each region shall be in proportion to the amount of such tax revenue
4 generated by restaurants within each respective tourism region. The Department of Tourism shall
5 ensure that all disbursements to the regions are used exclusively for regional tourism marketing.
6 The Department of Tourism shall promulgate rules, pursuant to chapter 1-26, to ensure the
7 expenditure of funds are in compliance with this section.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

445I0703

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1232 - 03/04/2003

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Madsen, Michels, and Teupel and Senator Apa

1 FOR AN ACT ENTITLED, An Act to permit the Governor to exempt certain sales and use
2 taxes in times of disaster and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 33-15 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Governor may, by executive order, exempt from the provisions of §§ 10-45-70 and 10-
7 46-57 and the computation of the tax imposed by such sections for the movement of
8 commodities and equipment in the event of disaster or impending disaster from any cause to the
9 extent that the livestock population will be deprived of necessary and essential food supplies and
10 equipment.

11 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
12 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
13 effect from and after its passage and approval.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0520

HOUSE ENGROSSED NO. **SB 63** - 03/04/2003

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to repeal the sales tax exemption for certain interstate
2 telecommunication services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-6.1 be amended to read as follows:

5 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed ~~on amounts paid for~~
6 ~~local telephone services, toll telephone services, and teletypewriter services,~~ a tax of four percent
7 ~~of the amount so paid. The taxes imposed by this section shall be paid by the person paying for~~
8 ~~the services. If a bill is rendered the taxpayer for local telephone service or toll telephone service,~~
9 ~~the amount on which the tax with respect to such services shall be based shall be the sum of all~~
10 ~~charges for such services included in the bill, except that if a person who renders the bill groups~~
11 ~~individual items for purposes of rendering the bill and computing the tax, then the amount on~~
12 ~~which the tax for each such group shall be based shall be the sum of all items within that group,~~
13 ~~and the tax on the remaining items not included in any such group shall be based on the charge~~
14 ~~for each item separately. If the tax imposed by this section with respect to toll telephone service~~
15 ~~is paid by inserting coins in coin operated telephones, the tax shall be computed to the nearest~~
16 ~~multiple of five cents, except that, where the tax is midway between multiples of five cents, the~~



~~next higher multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed by this chapter~~ upon the gross receipts from providing any telecommunication service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state. However, the tax imposed by this section does not apply to:

- (1) Any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- (2) Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- (3) Any sale of interstate telecommunication service provided to a call center.

For the purposes of this section, the term, telecommunication service, is the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means.

Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

As used in section 1 of this Act, the term, call center, means any physical location where telephone calls are placed, or received, for the purpose of making sales, marketing, customer service, or technical support. The term does not include:

- (1) Any location where telephone calls are primarily placed to, or received from, the same taxpayer, or affiliates of the same taxpayer, that owns or operates the location; or
- (2) Any insurance, real estate, or brokerage company.

Section 3. That § 10-45-12.1 be amended to read as follows:

10-45-12.1. The following services enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and

1 Budget, Office of the President are exempt from the provisions of this chapter: health services
2 (major group 80); educational services (major group 82) except schools and educational services
3 not elsewhere classified (industry no. 8299); social services (major group 83); agricultural
4 services (major group 07) except veterinarian services (group no. 074) and animal specialty
5 services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and
6 television broadcasting (group no. 483); railroad transportation (major group 40); local and
7 suburban passenger transportation (group no. 411) except limousine services; school buses
8 (group no. 415); farm product warehousing and storage (industry no. 4221); establishments
9 primarily engaged in transportation on rivers and canals (group no. 444); establishments primarily
10 engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged
11 in air transportation, noncertified carriers (group no. 452) except chartered flights (industry no.
12 4522) and airplane, helicopter, balloon, dirigible, and blimp rides for amusement or sightseeing;
13 pipe lines, except natural gas (major group 46); arrangement of passenger transportation (group
14 no. 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad
15 cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952);
16 security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers
17 and dealers (group no. 622); credit counseling services provided by individual and family social
18 services (industry no. 8322); construction services (division C) except industry no. 1752 and
19 locksmiths and locksmith shops; consumer credit reporting agencies, mercantile reporting
20 agencies, and adjustment and collection agencies (group no. 732), if the debt was incurred
21 out-of-state and the client does not reside within the state. The following are also specifically
22 exempt from the provisions of this chapter: financial services of institutions subject to tax under
23 chapter 10-43 including loan origination fees, late payment charges, nonsufficient fund check
24 charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers

1 checks, charges for administration of trusts, interest charges, and points charged on loans;
2 commissions earned or service fees paid by an insurance company to an agent or representative
3 for the sale of a policy; services of brokers and agents licensed under Title 47; the sale of trading
4 stamps; rentals of motor vehicles as defined by § 32-5-1 leased under a single contract for more
5 than twenty-eight days; advertising services; services provided by any corporation to another
6 corporation which is centrally assessed having identical ownership and services provided by any
7 corporation to a wholly owned subsidiary which is centrally assessed; continuing education
8 programs; tutoring; vocational counseling, except rehabilitation counseling; and motion picture
9 rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures;
10 ~~and charges made by a telecommunications company for the origination, transmission, switching,~~
11 ~~reception, or termination of an interstate telephone or telegraph communication.~~

12 Section 4. That § 10-45-6.2 be amended to read as follows:

13 10-45-6.2. There is hereby imposed a tax of four percent upon the gross receipts of mobile
14 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
15 originate and terminate in the same state and are billed to a customer with a place of primary use
16 in this state or are deemed to have originated or been received in this state and to be billed or
17 charged to a service address in this state if the customer's place of primary use is located in this
18 state regardless of where the service actually originates or terminates. Notwithstanding any other
19 provision of this chapter and for purposes of the tax imposed by this section, the tax imposed
20 upon mobile telecommunication services shall be administered in accordance with 4 U.S.C.
21 §§ 116-126 as in effect on July 28, 2000.

State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

488I0153

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 71** - 02/27/2003

Introduced by: Senators Olson (Ed), Dempster, Knudson, Koetzle, McCracken, Moore, Reedy, Sutton (Dan), and Symens and Representatives Schafer, Burg, Craddock, Elliott, Haverly, Kroger, LaRue, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to provide for the alternative certification of school
2 administrators.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Board of Education shall promulgate rules pursuant to chapter 1-26
5 establishing an alternative route to certification for persons employed as school administrators
6 who do not currently meet the certification requirements for the positions they hold. The
7 alternative certification program shall be delivered by an accredited college or university with an
8 approved program or endorsement program in the discipline. It shall be delivered in coordination
9 with the Department of Education and Cultural Affairs and the employing school system. The
10 alternative certification program shall include education coursework in administration, on-the-job
11 training, and mentorship.

12 Section 2. Effective July 1, 2005, all school administrators whose preparation does not meet
13 certification standards established in ARSD 24:16:09 shall submit to the Department of
14 Education and Cultural Affairs a professional development plan to meet the alternative



- 1 certification requirements established by the South Dakota Board of Education.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

345I0679

HOUSE ENGROSSED NO. **SB 154** - 03/04/2003

Introduced by: Senators Bogue, Abdallah, Diedrich (Larry), LaPointe, McCracken, and
Reedy and Representatives Peterson (Bill), Dykstra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to authorize certain interstate shipments of wine, to
2 establish certain penalties, and to collect sales tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Notwithstanding any other provision of law, any person who is at least twenty-one
5 years of age may purchase and receive wine from another state as provided in this section if the
6 wine is not in distribution in this state and the wine comes from a winery that is located in a state
7 that affords South Dakota wineries an equal reciprocal shipping privilege, or a winery located
8 in South Dakota. The person shall place an order with a licensee as defined in subdivision
9 35-4-2(3) or (5). The licensee shall order the wine through a wholesaler licensed pursuant to
10 subdivision 35-4-2(2) and the wholesaler shall arrange the purchase of wine. The licensee shall
11 inform the purchaser of the cost of the wine, the amount of any tax that would apply to the
12 purchase pursuant to § 35-5-3, the amount of sales tax that would apply, and the amount of
13 charges for freight and handling. The licensee shall collect the total amount due from the
14 customer before ordering the wine through the wholesaler. After receiving the order for the wine
15 from the licensed retailer the wholesaler shall arrange for the wine to be shipped directly to the



1 licensee who placed the order for the purchaser. Wine purchased pursuant to this Act may only
2 be delivered and received by the purchaser from a licensee as defined in subdivision 35-4-2(3)
3 or (5).

4 Section 2. If the wholesaler orders twelve or less cases of a particular brand of wine for an
5 individual purchaser in one calendar year pursuant to this section, no registration fee pursuant
6 to chapter 39-13 may be imposed.

7 Section 3. No person may receive more than twelve cases of wine, containing no more than
8 nine liters per case, in any calendar year for personal use from another state under this Act. No
9 person who receives wine under this Act may resell any of the wine. However, if the delivery of
10 the wine does not result in a completed sale to the person who placed the original order, the
11 licensee may sell the wine in the ordinary course of business. It is a Class 2 misdemeanor for any
12 person to receive more than twelve cases of wine during a calendar year in violation of this Act.
13 It is a Class 2 misdemeanor for any person to resell or attempt to resell any wine obtained
14 pursuant to this Act. The Department of Revenue shall promulgate rules pursuant to chapter
15 1-26 to provide for the reporting and tracking of information related to the sale of wine under
16 this Act and to prescribe forms for the implementation of this Act.

17 Section 4. Any licensee who holds a farm winery license pursuant to § 35-12-2 may ship no
18 more than twelve cases of wine per person per calendar year. A case may contain no more than
19 nine liters per case in any one shipment. Any wine sold may only be for personal use and not for
20 resale. The wine may only be sold directly to a resident of another state if the state to which the
21 wine is sent allows residents of the state to receive wine sent from outside that state.

22 Section 5. No person in the business of selling alcoholic beverages may ship or cause to be
23 shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued
24 pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any

- 1 person who violates this section and order such person to cease and desist any shipments of
- 2 alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a
- 3 Class 1 misdemeanor.

State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

743I0576

HOUSE ENGROSSED NO. **SB 188** - 03/04/2003

Introduced by: Senators Diedrich (Larry), Abdallah, Brown, Duxbury, Jaspers, McCracken, Moore, Olson (Ed), Schoenbeck, Sutton (Duane), and Symens and Representatives Dykstra, Begalka, Burg, Hargens, Konold, Peterson (Jim), Sebert, Solum, and Williamson

1 FOR AN ACT ENTITLED, An Act to provide a credit against certain taxes paid by railroads
2 for the replacement and repair of rail lines and to revise certain provisions regarding the
3 distribution of the assessed value of a railroad.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any publicly operated railroad or railway corporation operating over rail lines located within
8 this state may claim a credit against the tax levied on such rail lines for amounts that the railroad
9 or railway corporation has certified as having been expended in the replacement and repair of
10 such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for
11 a credit pursuant to this section. The certification required by this section shall be on forms
12 provided by the Department of Revenue. The labor and material expenses certified pursuant to
13 this section shall be itemized separately. The credit provided in this section shall be applied
14 proportionally across the railroad's entire mainline within this state. The credit shall be applied



1 to tax liability over a three-year period in an amount equal to thirty-three and one-third percent
2 the first year following certification; thirty-three and one-third percent of such an amount shall
3 carry forward into the second year following certification; and thirty-three and one-third percent
4 shall carry forward into the third year following certification. Each year's carryover shall be
5 accumulated as a tax credit with other years' annual tax credits. No credit may be given for the
6 repair or replacement of railway line necessitated by washout, fire, or train derailment. If any rail
7 line goes over ten million gross ton miles per mile annually in a calendar year, the rail line may
8 not receive a credit pursuant to this section in the following calendar year.

9 Section 2. That § 10-28-16 be amended to read as follows:

10 10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each
11 year, transmit to the county auditor of each county through which any railroad runs, a statement
12 showing the length of main track, of main line or lines, and the branches thereof and sidetracks
13 within such county, and the assessed value based on a statewide formula that weights traffic (ton
14 miles) ~~thirty-three and one-third~~ fifty percent and miles of track in the county by ~~sixty-six and~~
15 ~~two-thirds~~ fifty percent. The county auditor shall then distribute the value to each taxing district
16 where the line runs on a per mile basis within the county.